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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DAVID WESLEY BIRRELL, aka Bella-
12 Christina Birrell,

13 Plaintiff,

14 v.

15 MICHELLE DiTOMAS,

16 Defendant.
17

No. 2:22-CV-1834-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

18 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
19 42 U.S.C. § 1983.

20 On April 29, 2024, the District Judge directed Plaintiff to file an amended
21 complaint within 30 days. Plaintiff was warned that failure to file an amended complaint may
22 result in dismissal of this action for lack of prosecution and failure to comply with court rules and
23 orders. See Local Rule 110. To date, Plaintiff has not complied.

24 The Court must weigh five factors before imposing the harsh sanction of dismissal.
25 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
26 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
27 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
28 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;

1 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
2 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
3 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
4 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
5 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
6 1986). Dismissal has also been held to be an appropriate sanction for failure to comply with an
7 order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
8 1992).

9 Having considered these factors, and in light of Plaintiff's failure to file an
10 amended complaint as directed, the Court finds that dismissal of this action is appropriate.

11 Based on the foregoing, the undersigned recommends that this action be dismissed,
12 without prejudice, for lack of prosecution and failure to comply with court rules and orders.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court. Responses to objections shall be filed within 14 days after service of
17 objections. Failure to file objections within the specified time may waive the right to appeal. See
18 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 Dated: June 25, 2024



21 DENNIS M. COTA
22 UNITED STATES MAGISTRATE JUDGE
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